

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Linwood Mining & Minerals
Corporation
5401 Victoria Ave
Davenport, IA 52807**

Respondent

Docket Number: TSCA-HQ-2016-5015

**CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

RECEIVED BY O L J
2016 AUG 17 P.M.

I. COMPLAINT

This Complaint and Notice of Opportunity for Hearing (Complaint) is filed pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448 (2016 Act) and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Complainant is Gregory A. Sullivan, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency (EPA or Complainant), who has been duly delegated the authority to institute this action.

The Respondent is Linwood Mining & Minerals Corporation. (Linwood Mining & Minerals Corp. or Respondent), located at 5401 Victoria Avenue, in Davenport, IA 52807.

Complainant alleges that Respondent has violated the chemical data reporting (CDR) regulations of section 8(a) of TSCA, 15 U.S.C. § 2607(a).

COUNT I

1. Respondent is a corporation that owns or controls a facility located at 401 East Front Street, in Davenport, IA 52804-9500.
2. Respondent is a "person" as defined in 40 C.F.R. § 710.3 and as such is subject to TSCA and the regulations promulgated thereunder.
3. Respondent "manufactures" (imports) a "chemical substance" as defined respectively by sections 3(9) of TSCA, 15 U.S.C § 2602(9), and section 3(2)(A) of TSCA, 15 U.S.C. § 2602(A), as amended by the 2016 Act.
4. As a result of an EPA inspection on February 18, 2015 and its follow-up actions, Complainant found that Respondent has violated the CDR reporting requirements at 40 C.F.R. § 711.15.
5. During the calendar year 2011, Respondent manufactured 25,000 pounds (11,340 kilograms) or more of three (3) reportable chemical substances: CAS No. 1305-78-8; CAS No. 37247-91-9; and CAS No. 68131-74-8, as described in 40 C.F.R. §§ 711.5 and 711.8.
6. Respondent failed to submit a CDR report (Form U), reflecting the total annual volume (in pounds) of one of the reportable chemical substances manufactured (as set forth in paragraph 5), CAS No. 68131-74-8, by the August 13, 2012 regulatory deadline (see 40 C.F.R. § 711.20) pursuant to 40 C.F.R. § 711.15. The Respondent's failure to submit the Form U for the chemical substance identified in this paragraph constitutes the basis for count I.

7. Respondent subsequently sent a Form U, dated June 20, 2016, to EPA for the chemical substance set forth in paragraph 6.
8. Respondent's violation of 40 C.F.R. § 711.15, a rule promulgated under TSCA section 8(a), 15 U.S.C. § 2607(a), is unlawful under section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), as amended by the 2016 Act, and is subject to a civil penalty pursuant to section 16(a) of TSCA, 15 U.S.C. § 2615(a).

II. CIVIL PENALTY ASSESSMENT

Section 16 of TSCA, 15 U.S.C. § 2615, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, June 22, 2016, 130 Stat 448, 491, authorizes the assessment of a civil penalty for violations of TSCA section 15, 15 U.S.C. § 2614, in the maximum amount of \$37,500 for each day of violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and through 2015, requires EPA to adjust penalties to account for inflation. EPA's Civil Monetary Penalty Inflation Adjustment Rule establishes the maximum civil penalty of \$37,500 that may be assessed under TSCA section 16(a), per violation for each day of violation that occurred after January 12, 2009 through December 6, 2013 (see 40 C.F.R. § 19.4). The most recent Civil Monetary Penalty Inflation Adjustment Rule maintains a maximum penalty of \$37,500 for such violations but applies only to violations that occurred after November 2, 2015 (see 81 Fed. Reg. 43091, 43094 (July 1, 2016)).

For purposes of determining the amount of a civil penalty to be assessed, TSCA section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B) requires EPA to take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to

pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. In developing a proposed penalty, Complainant took into account the particular facts and circumstances of this case; the statutory factors set forth in TSCA section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B); and EPA's *Enforcement Response Policy (ERP) for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999). The TSCA ERP was developed in accordance with the *Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations at 45 Fed. Reg. 59,770 (Sept. 10, 1980). The TSCA ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to particular cases.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations of TSCA, the degree of culpability, and such other matters as justice may require, the Complainant proposes that Respondent be assessed a penalty of *TWENTY THOUSAND FOUR HUNDRED AND SIXTY-EIGHT DOLLARS* (\$20,468) for the violations alleged in this Complaint.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA § 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), and consistent with 40 C.F.R. § 22.15, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint with the Headquarters Hearing Clerk, within thirty (30) days of service of this Complaint, at the following address:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460.

Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice. Pursuant to the Consolidated Rules of Practice, 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in Complainant's filing of a Motion for Default Order imposing the penalties herein without further proceedings.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney of record assigned to represent EPA in this matter:

Mark Garvey, Esq.
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Washington, D.C. 20460
Telephone: (202) 564-4168;
E-mail: Garvey.Mark@epa.gov

IV. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty, once determined, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement. A Consent Agreement signed by EPA and Respondent would be binding as to all terms and conditions specified therein upon issuance of a Final Order by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of this action with the Administrator, the members of the Environmental Appeals Board, the assigned Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the issuance of this Complaint. *See* 40 C.F.R. § 22.8.

V. PAYMENT OF PENALTY

Instead of filing an Answer, requesting a hearing, or requesting an informal settlement conference, you may choose to pay the proposed penalty to resolve this matter pursuant to 40 C.F.R. § 22.18(a). Such payment should be made by sending either a cashier's or certified check with a notation of "Linwood Mining & Minerals Corp.," Docket No. "TSCA-HQ-2016-5015," payable to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. TSCA-HQ-2016-5015
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-900

or pay by wire transfer with a notation of "Linwood Mining & Minerals Corp." Docket No. "TSCA-HQ-2016-5015" by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045


Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency." A copy of the check or other instrument of payment should also be sent to the attorney of record assigned to represent EPA in this matter.

U.S. ENVIRONMENTAL PROTECTION AGENCY

TSCA-HQ-2016-5015

In the Matter of: Linwood Mining & Minerals Corp.

By:



Gregory A. Sullivan, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 8/14/16

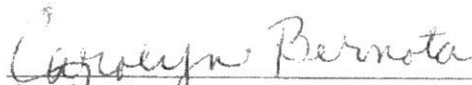
ATTACHMENT

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22.

CERTIFICATION

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-HQ-2016-5015, has been filed with the Headquarters Hearing Clerk and that a copy was sent certified mail, return receipt requested to:

Marissa Curran, Esq.
Polsinelli PC
100 S. Fourth Street
Suite 1000
St. Louis, MO 63102
Counsel for Linwood Mining & Minerals Corp.



Carolyn Bernota (2249A)
Enforcement Officer
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

17 - August - 2016
Date